MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ERICKA J. SAUVAIN, AMY LEIGH SAUVAIN, BY NEXT FRIEND ERICKA J. SAUVAIN, AND BONNIE S. HUGHES

RESPONDENTS,

v.

ACCEPTANCE INDEMNITY INSURANCE COMPANY

APPELLANT.

DOCKET NUMBER WD72343

DATE: April 12, 2011

Appeal From:

Clay County Circuit Court
The Honorable Anthony R. Gabbert, Judge

Appellate Judges:

Division Three: Cynthia L. Martin, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

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Attorneys:

Stephen R. Bough, Kansas City, MO and Michael W. Blanton, Leawood, KS, for respondents.

John G. Schultz and Timothy P. Price, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENTS,

v.

ACCEPTANCE INDEMNITY INSURANCE COMPANY,

APPELLANT.

No. WD72343 Clay County

Before Division Three: Cynthia L. Martin, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

This is an action in equitable garnishment based on disputed insurance coverage for an automobile accident. Acceptance Indemnity Insurance Company ("Acceptance") appeals the judgment of the trial court, which granted summary judgment in favor of Amy Sauvain, Ericka Sauvain, and Bonnie Hughes (collectively "Plaintiffs"), and denied Acceptance's cross-motion for summary judgment, as it pertained to Plaintiffs' equitable garnishment action brought against Acceptance.

REVERSED AND REMANDED.

In the underlying lawsuit, Plaintiffs alleged that David Bowman, Jr.'s ("Bowman, Jr.") negligence caused a head-on vehicular collision with a vehicle operated by John Sauvain, III ("Sauvain"). Bonnie Hughes ("Hughes") was a passenger in Sauvain's car. Sauvain passed away from the injuries he sustained in the collision, and Hughes suffered serious physical injuries. In an underlying trial, the court found Bowman, Jr. liable, and entered a judgment against him and in favor of Plaintiffs. Plaintiffs entered into a settlement agreement pursuant to Section 537.065 with Bowman, Jr. Plaintiffs brought the instant action in an attempt to garnish an insurance policy that they contend insured Bowman, Jr. at the time of the accident.

David H. Bowman, Sr. ("Bowman, Sr.") purchased the car for Bowman, Jr. as a wedding present from a used car dealer, USA Cars, Inc., ("USA Cars") located in Wylie, Texas. Bowman, Sr. signed a document to purchase the vehicle for $4,257.00 on March 24, 2005. No representative for USA Cars signed the purchase agreement. Notwithstanding this fact, Bowman, Sr. paid the sales price in full, was given a receipt and the car keys by USA Cars, and Bowman, Sr. drove the vehicle off the lot on that day. No title was given to either Bowman.

Acceptance issued USA Cars a “garage” insurance policy (“Policy”), that insured USA Cars from loss on certain “autos” that were “owned” by USA Cars. No party disputes that Texas substantive law governs the substantive issues in this dispute.

The trial court noted that Acceptance attempts in its summary judgment motion to deny liability on the ground that the vehicle in question was owned by Bowman, Sr. at the time of the collision, but in its denial of coverage letters it claimed Bowman, Jr. was the owner of the vehicle at the time of the collision. The trial court concluded that as a matter of law, Acceptance is not entitled to deny liability on this ground which was not identified in its denial letters. This is commonly referred to as the "denial letter rule." An insurer, having denied liability on a specified ground, may not thereafter deny liability on a different ground. To determine the applicability of the denial letter rule the courts look to principles of waiver and estoppel. Under the terms of the policy in question it was immaterial if Bowman, Sr. or Bowman, Jr. was the owner of the car, the issue in question was that the car was not owned by USA Cars at the time of the accident. In this case the denial letters put Plaintiffs on reasonable notice of the subsequently clarified but consistent defense by Acceptance that USA Cars did not own the vehicle.

The next issue before the court is to determine if the uncontroverted facts established the ownership of the vehicle. Texas courts look to the transfer of possession and control of the vehicle, pursuant to the *parties' intent to effect the sale* to determine ownership for insurance purposes. Here, it was uncontroverted that Bowman, Sr. paid USA Cars the full sale for the car. Furthermore, it was uncontroverted that USA Cars delivered the vehicle to Bowman, Sr. and that he took possession and control of the vehicle. However, it was also uncontroverted that pursuant to the express terms of the purchase contract used by USA Cars that in order to have a binding contract, the contract had to be signed by both parties and that the purchase agreement in this case was not in fact signed by USA Cars. It is also an uncontroverted fact that Bowman, Sr. called USA Cars to ask permission for Bowman, Jr. to leave the state in the car. Taken together, these facts create a disputed factual issue as to the intent of the parties to effect the sale under the standard set forth in Texas cases. Thus, Plaintiffs were not entitled to summary judgment because as a matter of law, they could only recover under the Policy if USA Cars owned the vehicle at the time of the collision, and based on the record before the trial court this was a material fact in dispute pursuant to Texas law. The trial court erred in granting Plaintiffs' motion for summary judgment.

Acceptance also argues that the trial court erred in overruling Acceptance’s motion for summary judgment because there is no genuine dispute of material fact and Acceptance is entitled to judgment as a matter of law. For the same reasons set forth above relating to the disputed facts as to the ownership of the car under Texas law, we disagree. The trial court did not err in failing to grant Acceptance's motion for summary judgment. The cause is remanded for further proceedings consistent with this opinion.

Opinion by Gary D. Witt, Judge April 12, 2011

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